

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IYO, INC.,

Plaintiff,

v.

IO PRODUCTS, INC., et al.,

Defendants.

Case No. [25-cv-04861-TLT](#)

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER**

Re: ECF 6

The underlying dispute in this action is whether the use of the mark “IO” causes confusion, mistake, and/or deception with Plaintiff IYO, Inc. (“Plaintiff” or “IYO”)’s registered mark “IYO.” ECF 1, ¶¶ 129–30. On June 9, 2025, Plaintiff filed a complaint alleging, among other claims, trademark infringement against Defendants IO Products, Inc. (“IO Products”), OpenAI, Inc., OpenAI LLC, Sam Altman, and Jonathan Paul Ive (collectively, “Defendants”). *Id.* ¶¶ 128–76. The parties in this action are well-acquainted. *See id.* ¶¶ 66–92.

Before the Court is Plaintiff’s motion for temporary restraining order (“TRO”),¹ seeking to broadly enjoin Defendants from using Plaintiff’s IYO mark, and any mark confusingly similar thereto, including without limitation “IO.” ECF 6. Because the motion did not seek ex parte relief, the Court issued an order setting a briefing schedule and hearing date. ECF 10.

After review and consideration of motion, briefings, attachments and exhibits thereto, the Court **GRANTS** Plaintiff’s motion for TRO.

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¹ Plaintiff also shoehorns a request for preliminary injunction in its TRO motion. *See* ECF 6. In light of the limited record and the broad relief requested, the Court sets further hearing and briefing schedule regarding motion for preliminary injunction. *See infra* at 21.

I. BACKGROUND**A. Procedural History**

On June 9, 2025, Plaintiff filed a complaint against Defendants alleging: (1) trademark infringement under 15 U.S.C. § 1114, (2) false design and unfair competition under 15 U.S.C. § 1125(a), (3) violation California Unfair Competition Law (“UCL”), (4) common law false designation of origin and unfair competition, (5) contributory infringement, and (6) inducement of infringement. ECF 1, ¶¶ 128–76.

On the same day, Plaintiff filed a motion for TRO based on its trademark infringement claim. ECF 6. The Court set a briefing schedule and hearing. ECF 10. Defendants timely filed an opposition on June 12, 2025. ECF 25; *but see* ECF 30 (supporting declaration filed four minutes passed the deadline). Plaintiff filed a reply on June 15, 2025. ECF 35. Defendants filed objections on June 16, 2025. ECF 39. The Court heard the matter on June 17, 2025.

B. Factual History**1. IYO’s use of the mark**

IYO, Inc. was founded in 2021. ECF 1, ¶ 46. IYO filed to register the mark IYO on September 17, 2021. *Id.* ¶ 50. On June 4, 2024, the application matured into Registration No. 7,409,119. *Id.*; *see* ECF 1-1, Exhibit (“Ex.”) A. IYO has used the IYO mark continuously in commerce in the United States since at least as early as February 2, 2024, in connection with its audio-centric hardware and software. ECF 1, ¶ 47. IYO’s first product, the VAD PRO and the soon-to-launch IYO ONE both bear the IYO mark. *Id.* In addition, IYO promotes the IYO Mark and its products through a number of channels. *Id.* ¶ 55.

IYO’s most recent product—the IYO ONE—is a specialized ear-worn device that allows users to interact with their smartphones, computers, artificial intelligence (“AI”), and the internet without the use of screens, keyboards, mice, or other similar physical interfaces. *Id.* ¶¶ 34, 36–39. IYO ONE is marketed for sale through IYO’s website iyo.audio, and is available for presale to the general public, with shipping expected in September or October 2025. *Id.* ¶ 44.

2. OpenAI's Acquisition of IO Products

On September 21, 2023, IO Products was formed as a Delaware corporation. *Id.* ¶ 66. Plaintiff alleges that the existence of IO Products remained largely a secret as it did not register to do business in California until April 4, 2024. *Id.*

Its goal was to develop new ways for people to use AI. ECF 29, Declaration of Sam Altman ("Altman Decl.") ¶ 2. To determine which product or form factor to pursue, IO Products purchased a wide range of earbuds, hearing aids, and at least 30 different headphone sets from a variety of different companies including IYO. ECF 26, Declaration of Tang Yew Tan ("Tan Decl.") ¶ 4; ECF 27, Declaration of Marwan Rammah ("Rammah Decl.") ¶ 3.

On May 21, 2025, OpenAI Chief Executive Officer ("CEO") Sam Altman and Apple designer Jonathan Ives announced the existence of IO and OpenAI's \$6.5 billion acquisition of IO. ECF 1, ¶ 93. OpenAI is an AI organization founded in December 2015, which among other things, aims to develop artificial general intelligence ("AGI"). *Id.* ¶ 57. OpenAI is known for the GPT family of large language models, the DALL-E series of text-to-image models, and a text-to-video model named Sora. *Id.* ¶ 59. Altman and Ives also announced IO's decision to make a new category of computer devices that allow users to interact with their smartphones, computers, AI, and the internet without the use of screens, keyboards, mice, or other similar physical interfaces. *Id.* ¶ 93.

Through this announcement, Plaintiff contends that "OpenAI, IO, Sam Altman, and Jony Ive ha[d] just announced a significant collaboration in a new venture, IO, the name of which is a homophone of Plaintiff's IYO name, and the purpose of which is to launch a product whose purpose and function is eerily similar to and competitive with IYO's product." *Id.* ¶ 14.

3. Defendant's Knowledge of IYO prior to Announcement

Through a series of contacts, Plaintiff alleges that OpenAI knew of IYO prior to its acquisition and announcement of IO Products. *Id.* ¶ 70. In February 2022, IYO attempted to recruit Evans Hankey, one of IO Products's co-founders, to work as Head of Design at IYO. *Id.* ¶ 71. In March 2022, representatives from Apollo Projects, Sam Altman's personal investment fund, met with IYO, obtained technical information from IYO, and discussed IYO's vision for the

future of human/computer interaction and the use of natural language. *Id.* ¶ 72. Ryan Cohen, a representative of Apollo Projects, also visited IYO’s headquarters where IYO shared its vision and story with him and provided him demonstrations of its technology. *Id.* ¶ 73.

In April 2022, IYO was introduced to Ive’s company LoveFrom to see if LoveFrom would collaborate with it on natural language screenless computers. *Id.* ¶ 75. At the time, LoveFrom declined to collaborate. *Id.* ¶ 76.

On March 4, 2025, IYO reached out to Altman again to request a meeting to pitch its latest strategic financing round. *Id.* ¶ 77. Altman responded the same day, stating “thanks but im working on something competitive so will respectfully pass!” *Id.* ¶ 78. He included that it was “called io.” *Id.* In follow-up, Altman stated that Ive is “the one driving this.” *Id.*

On March 17, 2025, Marwan Rammah, a product design engineer for IO Products, purchased IYO’s VAD PRO product and pre-ordered an IYO ONE device. *Id.* ¶ 80. Tang Yew Tan, the co-founder of IO Products, also preordered the IYO ONE. *Id.*

On March 26, 2025, IYO discussed with Altman the possibility of OpenAI acquiring IYO and launching IYO ONE as a developer kit for a new kind of computer based on natural language interaction. *Id.* ¶ 84. Plaintiff was connected with Tang Yew Tan, co-founders of IO Products. *Id.* ¶ 87. On April 17, 2025, at Tan’s request, Plaintiff fitted seven of IO Products’s representatives to demo IYO ONE devices. *Id.* ¶ 89. Tan indicated that Plaintiff’s product had potential and even requested review Plaintiff’s intellectual property. *Id.* ¶ 92. Tan’s request came six days prior to the OpenAI’s announcement acquiring IO Products. *Id.*

4. Alleged Harm Suffered by IYO

On May 23, 2025, two days after the May 21 announcement, IYO’s founder emailed Altman to express concern that investors had contacted him about confusion between the parties’ company names. *Id.* ¶ 111. On May 29, 2025, IYO’s founder again told Defendants that the announcement of IO and the resulting confusion was causing problems for IYO and its investors, network, and fund-raising efforts. *Id.* ¶ 112. IYO’s founder asked that Defendants cease using the IO name to stop the confusion, stating that the situation was “urgent.” *Id.* In a call, Altman declined to stop using IO. *Id.* ¶ 112.

1 Since the May 21 announcement, IYO has not been able to secure any additional funding
2 or pledges for funding due to investors' expressed concerns over the infringement. ECF 6-6,
3 Declaration of Jason Rugolo ("Rugolo Decl."), ¶¶ 30–32.

4 **II. LEGAL STANDARD**

5 A TRO enjoins conduct pending a hearing on a preliminary injunction. Fed. R. Civ. P.
6 65(b). The standard for issuing a TRO and issuing a preliminary injunction are substantially
7 identical. *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
8 2001). Either is an "extraordinary remedy" that the court should award only upon a clear showing
9 that the party is entitled to such relief. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
10 20 (2008).

11 Plaintiff seeking preliminary relief must establish: (1) that they are likely to succeed on the
12 merits; (2) that they are likely to suffer irreparable harm in the absence of preliminary relief; (3)
13 that the balance of equities tips in their favor; and (4) that an injunction is in the public interest.
14 *Id.* A court must find that "a certain threshold showing" is made on each of the four required
15 elements. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). Under the Ninth Circuit's
16 sliding scale approach, a preliminary injunction may issue if there are "serious questions going to
17 the merits" if "a hardship balance [also] tips sharply towards the [movant]," and "so long as the
18 [movant] also shows that there is a likelihood of irreparable injury and that the injunction is in the
19 public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

20 **III. EVIDENTIARY OBJECTIONS**

21 On June 16, 2025, Defendants filed evidentiary objections to Plaintiff's reply evidence.
22 ECF 39. Defendants' primary objection is Plaintiff's unauthorized filing of reply, declarations and
23 exhibits attached thereto. *Id.* at 1. The Court set a briefing schedule and hearing date for the
24 instant motion. ECF 10. The Court's order was silent as to whether Plaintiff could file a reply.
25 *Id.* Nevertheless, on June 15, 2025, Plaintiff filed a reply. ECF 35. Because the Court's order
26 was silent and civil local rules provide for reply briefing, *see* L.R. 7-3(c), the Court will consider
27 Plaintiff's reply over Defendants' objection.
28

Defendants also object to the Reply Declaration of Jason Rugolo and accompanying exhibits. ECF 39, at 2–5. Defendants request that the Court sustain Defendant’s objections to Rugolo Declaration Exhibit K and Paragraphs 3, 5, and 12. *Id.* at 5.

The Ninth Circuit has established that the “district court need not consider arguments raised for the first time in a reply brief.” *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). Here, Plaintiff did not raise its notes in Exhibit K and Paragraph 3, nor its statements in Paragraphs 5 and 12 until the reply briefing. At this time, the Court sustains Defendants’ objections solely on the ground that they are improper reply evidence.

IV. DISCUSSION

The Court will first determine whether the action is ripe. The Court will then apply the four *Winter* factors to determine whether to grant the TRO based on the trademark infringement claim. If necessary, the Court will determine whether bond is appropriate.

A. Plaintiff has alleged an imminent injury for the purpose of ripeness.

As an initial matter, Defendants argue that the Court lacks jurisdiction over the instant action because Defendants have not launched a product with the io mark yet. ECF 25, at 15–17. The parties do not dispute that IO Products currently has no existing product that uses the io mark. ECF 26, Tan Decl. ¶ 16. But IO Products concedes that it plans to release a product with the io mark in at least a year. *Id.* In response, Plaintiff argues that Defendants have announced a working prototype, ECF 1, ¶ 102, and their May 21 announcement was in fact a product announcement: “Sam & Jony introduce io,” *see* ECF 6-16, Ex. J.

“Along with standing and mootness, ripeness is one of three justiciability requirements.” *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022). “Ripeness is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.” *Id.* (citing *Ass’n of Irrigated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021)) (internal quotations omitted). “The basic rationale of the ripeness requirement is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Id.* (citing *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 902 (9th Cir. 1993)) (internal quotations omitted).

1 “The constitutional component of ripeness is synonymous with the injury-in-fact prong of
2 the standing inquiry.” *Id.* (citing *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n.2
3 (9th Cir. 2003)). “Whether framed as an issue of standing or ripeness, an injury must involve an
4 invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or
5 imminent, not conjectural or hypothetical.” *Id.* (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555,
6 560 (1992)).

7 “A question is fit for decision when it can be decided without considering contingent
8 future events that may or may not occur as anticipated, or indeed may not occur at all.”
9 *Name.Space, Inc. v. Internet Corp. for Assigned Names & Numbers*, F.3d 1124, 1132 (9th Cir.
10 2015) (citing *Addington v. U.S. Airline Pilots Ass’n*, 606 F.3d 1174, 1179 (9th Cir. 2010))
11 (internal quotations omitted). In *Name.Space*, the Ninth Circuit applied the ripeness inquiry in the
12 trademark infringement context. *Id.* The court dismissed the trademark infringement claim,
13 finding that “the complaint as it stands does not allege actual or imminent infringement.” *Id.*
14 (citing *Sweedlow, Inc. v. Rohm & Haas Co.*, 455 F.2d 884, 886 (9th Cir. 2009)) (internal
15 quotations omitted).

16 Defendants focus on the “actual and imminent” inquiry. ECF 25, at 15–17. Defendants
17 argue that their announcement that OpenAI and IO Products would be merging and would develop
18 in the future a new family of products is insufficient to establish an actual or imminent injury. *Id.*
19 at 15.

20 In response, Plaintiff argue that Defendants admit that their product will compete with
21 IYO; their products are called “io”; their product will be released next year; their company is
22 called IO Products; they have a functioning prototype; they invested \$6.5 billion in the products;
23 they own the domain io.com; they plan to mass market their products on io.com to everyone; their
24 announcement was titled “Sam and Jony introduce io;” and they have declined to cease using the
25 io mark. ECF 35, at 4. Plaintiff contends that these facts indicate that injury is imminent. *Id.*

26 The Court finds two cases to be instructive. In *LegalForce RAPC Worldwide, P.C. v.*
27 *LegalForce, Inc.*, this district court determined whether the trademark infringement dispute was
28 ripe. No. 22-CV-03724-TLT, 2023 WL 6930330, at *7 (N.D. Cal. Oct. 19, 2023), *aff’d sub nom.*

1 *LegalForce RAPC Worldwide, PC v. LegalForce, Inc.*, 124 F.4th 1122 (9th Cir. 2024). The court
 2 first concluded that defendant did not advertise or sell products and services in the U.S. using the
 3 contested marks. *Id.* at *6. With no actual infringement, the court turned to whether the
 4 infringement was imminent. *Id.* Defendant had filed a U.S. trademark application and had made
 5 statement in June 2022 that it was planning to expand into the U.S. by March 2023. *Id.* However,
 6 the articles stating defendant’s intent to expand did not reflect that defendant intended to use the
 7 contested marks. *Id.* The court held that these facts by themselves were not sufficient to establish
 8 an imminent injury as to products sales in the U.S. and plan to launch products in the U.S. *Id.* at
 9 *8.

10 In *JGX, Inc. v. Handlery*, the court also determined whether the trademark infringement
 11 dispute was ripe. No. 17-CV-00287-BLF, 2018 WL 984856, at *3 (N.D. Cal. Feb. 20, 2018).
 12 Plaintiff’s lease had expired for its lounge and restaurant called “Lefty O’Doul’s.” *Id.* at *4.
 13 Defendants took over the restaurant and publicly announced the restaurant “isn’t moving
 14 anywhere” and “will remain” “at the same location” under the same name. *Id.* The court found
 15 that because the restaurant had not reopened yet, plaintiffs could not allege actual infringement of
 16 the “Lefty O’Doul’s” mark. *Id.* However, the court found that defendants’ “public statements,
 17 combined with [p]laintiffs’ allegations that [d]efendants left up signage and menus after the lease
 18 expired, and the extensive loss of revenues resulting from these statements, [was] sufficient to
 19 allege imminent and impending use of the mark.” *Id.*

20 Like in *LegalForce* and *JGX*, because Defendants have not yet released a product with the
 21 disputed mark, IYO cannot allege actual infringement. However, Defendants have working
 22 prototype, ECF 1, ¶ 102, the product will compete with Plaintiff’s product, *id.* ¶ 78, the product
 23 will be called by the disputed mark, *id.*, and the product will be released in at least a year, ECF 26,
 24 Tan Decl. ¶ 16. The Court finds these allegations are sufficient to establish an imminent injury for
 25 the purposes of ripeness. *See, e.g., Kythera Biopharmaceuticals, Inc. v. Lithera, Inc.*, 998 F. Supp.
 26 2d 890, 902 (C.D. Cal. 2014) (finding ripeness where neither party had “commercially available
 27 products or services”); *JGX*, 2018 WL 984856, at *4 (“The law does not require the [c]ourt to wait
 28 until [d]efendants physically re-open their doors.”).

B. Likelihood of Success on the Merits

“In order to state a claim for trademark infringement under the Lanham Act, the plaintiff must show that (1) the plaintiff has a protectible ownership interest in the mark, or for some claims, a registered mark; (2) the defendant used the mark ‘in connection with’ goods or services; and (3) that use is likely to cause confusion.” *LegalForce RAPC Worldwide, PC v. LegalForce, Inc.*, 124 F.4th 1122, 1125 (9th Cir. 2024) (citing 15 U.S.C. §§ 1114(1)(a), 1125(a)). “More precisely . . . at the preliminary injunction [or TRO] stage, [the plaintiff] must establish this it is likely to be able to show such a likelihood of confusion.” *Brookfield Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1053 n.15 (9th Cir. 1999) (citation omitted).

1. Plaintiff has a protectable ownership interest in the mark.

As an initial matter, Plaintiff has a valid federal registration for its IYO trademark (Reg. No. 7,409,119). *See* ECF 1-1, Ex. A. “Registration of a mark is prima facie evidence of the validity of the mark, the registrant’s ownership of the mark, and the registrant’s exclusive right to use the mark in connection with the goods specified in the registration.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014) (citing 15 U.S.C. § 1115(a)). Where the proof of registration for the federally registered trademark is uncontested, the element requiring proof of a valid, protectable trademark is met. *Id.* Plaintiff has established the “protectible ownership interest in the mark” requirement.

2. Defendants used the disputed mark in connection with the sale of goods or services.

Next, Defendants argue that the io mark has not been used in commerce in connection with the sale, distribution, or advertising of any actual good or service. ECF 25, at 19. Defendants contend that Plaintiff’s allegations limited to Defendants issuing a press release and publishing a video are insufficient to establish “use in commerce.” *Id.*

The Ninth Circuit has made clear that “use in commerce” language in the Lanham Act “is simply a jurisdictional predicate to any law passed by Congress under the Commerce Clause.” *Bosley Med. Inst., Inc. v. Kremer*, 403 F.3d 672, 677 (9th Cir. 2005). Rather, to prevail on its trademark infringement claims, Plaintiff must show that Defendants used the disputed trademark

1 “in connection with a sale of goods or services.” *Id.* “[T]he ‘use in connection with the sale of
2 goods and services’ requirement of the Lanham Act does not require any actual sale of goods and
3 services.” *Id.* at 679. But the appropriate inquiry is whether Defendants offer “competing [goods
4 or] services to the public.” *Id.*

5 Here, Defendants have working prototype, ECF 1, ¶ 102, the product will compete with
6 Plaintiff’s product, *id.* ¶ 78, and the product will be called by the disputed mark, *id.* Plaintiff has
7 sufficiently alleged the “in connection with a sale of goods or services” requirement.

8 **3. The *Sleekcraft* factors weigh in favor of infringement.**

9 The Court next turns to the “consumer confusion” requirement. Consumer confusion may
10 be shown as either forward or reverse confusion. *Ironhawk Techs., Inc. v. Dropbox, Inc.*, 2 F.4th
11 1150, 1159 (9th Cir. 2021). “Forward confusion occurs when consumers believe that goods
12 bearing the junior mark came from, or were sponsored by, the senior mark holder. By contrast,
13 reverse confusion occurs when consumers dealing with the senior mark holder believe that they
14 are doing business with the junior one.” *Id.* at 1159–60 (citations and internal quotation marks
15 omitted).

16 The likelihood of confusion element is governed by the eight *Sleekcraft* factors: “(1)
17 strength of the protected mark; (2) proximity and relatedness of the goods; (3) type of goods and
18 the degree of consumer care; (4) similarity of the protected mark and the allegedly infringing
19 mark; (5) marketing channel convergence; (6) evidence of actual consumer confusion; (7)
20 defendant’s intent in selecting the allegedly infringing mark; and (8) likelihood of product
21 expansion.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1125 (9th Cir. 2014) (citing *AMF*
22 *Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979), *abrogated on other grounds by*
23 *Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 810 n.19 (9th Cir. 2003)). “[T]his multi-
24 factor approach must be applied in flexible fashion” and the facts are “not a rote checklist”; “[a]
25 determination may rest on only those factors that are most pertinent to the particular case . . . and
26 other variables besides the enumerated factors should also be taken into account based on the
27 particular circumstances.” *Rearden*, 683 F.3d at 1209 (citations omitted). “[A] plaintiff need not
28 satisfy every factor, provided that strong showings are made with respect to some of them.” *Pom*

1 *Wonderful*, 775 F.3d at 1125 (quoting *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 631
2 (9th Cir. 2005)).

3 Courts “must be acutely aware of excessing rigidity when applying the [*Sleekcraft* factors]
4 in the Internet context; emerging technologies require a flexible approach.” *Brookfield*, 174 F.3d
5 at 1054 (emphasis added).

6 Plaintiff argues that the *Sleekcraft* factors demonstrate that it has a likelihood of success for
7 its trademark infringement claim based on reverse confusion. ECF 6, at 15–21. Defendants argue
8 that the *Sleekcraft* factors do not indicate a likelihood of success. ECF 25, at 18–25. The Court
9 will address each *Sleekcraft* factor in turn.

10 **a. Strength of the Mark**

11 “The stronger a mark—meaning the more likely it is to be remembered and associated in
12 the public mind with the mark’s owner—the greater the protection it is accorded by the trademark
13 laws.” *Network Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058). “A mark’s
14 strength is ‘evaluated in terms of its conceptual strength and commercial strength.’ ” *JL Beverage*
15 *Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1106 (9th Cir. 2016) (citation omitted).

16 “Conceptual strength involves classification of a mark ‘along a spectrum of generally increasing
17 inherent distinctiveness as generic, descriptive, suggestive, arbitrary, or fanciful.’ ” *Network*
18 *Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058). “Arbitrary or fanciful
19 marks deserve wide protection because the trademark holder can properly expect to run into very
20 little confusion from honest competitors . . . [and because] the trademark holder must work hard to
21 make consumers associate the trademark with the product.” *Dreamwerks Prod. Grp., Inc. v. SKG*
22 *Studio*, 142 F.3d 1127, 1130 n.7 (9th Cir. 1998). “Commercial strength is based on ‘actual
23 marketplace recognition,’ and thus ‘advertising expenditures can transform a suggestive mark into
24 a strong mark.’ ” *Network Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058).

25 In cases of reverse confusion, the Court assesses “whether consumers doing business with
26 the senior user might mistakenly believe that they are dealing with the junior user,” which requires
27 “evaluat[ing] the conceptual strength of [the plaintiff’s] mark and compar[ing] it to the
28 commercial strength of [the defendant’s] mark.” *Ironhawk*, 2 F.4th at 1162 (quoting *JL Beverage*,

828 F.3d at 1107). “[I]n a reverse confusion claim, a plaintiff with a commercially weak mark is more likely to prevail than a plaintiff with a stronger mark, and this is particularly true when the plaintiff’s weaker mark is pitted against a defendant with a far stronger mark.” *Id.* at 1163 (quoting *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 841 (9th Cir. 2002) (per curiam)). Indeed, the central question is whether the junior mark is so commercially strong as to overtake or “swamp the reputation” of the senior mark. *Id.* at 1162–63 (first citing *Walter v. Mattel, Inc.*, 210 F.3d 1108, 1111 n.2 (9th Cir. 2000); and then citing *Dreamwerks*, 142 F.3d at 1130 n.5).

Here, IYO is a conceptually strong mark because it is arbitrary or fanciful and the USPTO issued a registration without requiring proof of secondary meaning. *See* ECF 6-2, at 16; *see also* *Zobmondo Ent., LLC v. Falls Media, LLC*, 602 F.3d 1108, 1115 (9th Cir. 2010) (“[T]he federal officials who register a mark are perceived to have some expertise in assessing if it is entitled to registration, and absent a presentation of secondary meaning, their registration is entitled to a presumptive validity, a presumptive conclusion that the mark was distinctive else they would not have registered it.”). In response, Defendants simply argue that it is unclear what IYO means. ECF 25, at 20.

The Court next turns to the commercial strength of the marks. Plaintiff contends that Defendants’ IO mark is already so commercially strong that it has overtaken Plaintiff’s senior mark and caused actual confusion among investors. ECF 6-2, at 16. Prominent publications nationwide picked up OpenAI’s acquisition of IO Products. ECF 1, ¶ 13 n.1. The Court agrees with Plaintiff that Defendants have a commercially strong mark.

Here, the Court finds that Plaintiff may show that Defendants’ use of the IO mark may “swamp the reputation” of the IYO mark, and Plaintiff’s reputation and business could be affected. Based on this record, the Court finds that this factor favors finding infringement.

b. Proximity and Relatedness of Goods

“Goods and services are related when they are complementary, sold to the same class of purchasers, or similar in use and function.” *Ironhawk*, 2 F.4th at 1163 (citing *Sleekcraft*, 599 F.2d at 350). A plaintiff suing for trademark infringement “need not establish that the parties are direct competitors to satisfy the proximity or relatedness factor.” *Rearden*, 683 F.3d at 1212. Rather,

“[r]elated goods (or services) are those ‘which would be reasonably thought by the buying public to come from the same source if sold under the same mark.’ ” *Ironhawk*, 2 F.4th at 1163 (quoting *Sleekcraft*, 599 F.2d at 348 n.10). Within the Ninth Circuit, courts “adopt[] a rather flexible approach to the whole notion of competition.” *Rearden*, 683 F.3d at 1212 (collecting cases). Even where “the parties are not direct competitors,” “[t]heir businesses may be sufficiently ‘complementary’ or ‘related’ that the public is likely to be confused as to the source of the services.” *Am. Int’l Grp., Inc. v. Am. Int’l Bank*, 926 F.2d 829, 832 (9th Cir. 1991) (citations omitted).

In an email, Altman stated that Defendants were working on “something competitive . . . called io.” ECF 1, ¶ 78. Plaintiff argues that both companies are working on products that are intended to allow users to interact with their smartphones, computers, AI and the internet without legacy hardware. ECF 6-2, at 17. Plaintiff contends even if Defendant’s product is not an in-ear device like Plaintiff’s, the products need not be identical to be competing or related. ECF 35, at 8; *see Dreamwerks*, 142 F.3d at 1131 (finding movies and sci-fi merchandise to be related).

In response, Defendants argue that Plaintiff’s ear-device is a legacy hardware itself. ECF 25, at 20–21. Defendants contend that their product will not rely on legacy hardware like Plaintiff’s. *Id.*

At this stage, considering the intended goals of the products, Plaintiff is likely to success in showing that the products are related and proximate in the market. The Court finds that this factor favors finding infringement.

c. Types of Goods and Degree of Consumer Care

This factor considers “the sophistication of the customers,” including whether a “‘reasonably prudent consumer’ would take the time to distinguish between the two product lines.” *Ironhawk*, 2 F.4th at 1167 (citation omitted). “ ‘When the buyer has expertise in the field,’ or ‘the goods are expensive, the buyer can be expected to exercise greater care in his purchases.’ ” *Id.* (citation omitted).

Plaintiff argues that the intended buyers for both products are members of the general public. ECF 6-2, at 23. Both devices are intended to lessen reliance of their users on computer

literacy by allowing users to interact with natural language. *Id.* Plaintiff's IYO ONE is \$999 for the WiFi version, \$1,199 for the WiFi + LTE version, which is in the range of pricing for other mass market electronics such as smartphones and tablets. *Id.*

Defendants counter Plaintiff's consumers are in fact a highly specialized audience. ECF 25, at 24. Before filing this action, Plaintiff's website described its target audience as professional musicians, audio engineers, audiophiles, auditory neuroscientists, psychoacousticians. ECF 30, Declaration of Margret M. Caruso ("Caruso Decl.") ¶ 2. Not only does Plaintiff's product cost \$1,000, but it also requires an in-person appointment with an audiologist to create custom ear molds. ECF 26, Tan Decl. ¶ 5; ECF 27, Rammah Decl. ¶ 4.

Plaintiff counters that while its first product, the VAD PRO was targeted to a limited audience and required a custom fitting, its IYO ONE product is marketed to the general public and will not require general fitting. ECF 35, at 12. Based on the filings, there is no indication that IYO ONE product was not intended for broader audiences. *See* ECF 30-1, Ex. A (website does not advertise limited audience for IYO ONE); ECF 35-5, Ex. N (website advertises to a limited audience only for the VAD PRO).

Based on the limited record, the Court finds that this factor weighs in favor of infringement. At this stage, this factor favors TRO.

d. Similarity of the Marks

"The following axioms define and delimit the similarity analysis: (1) similarity is best evaluated by appearance, sound, and meaning; (2) marks should be considered in their entirety and as they appear in the marketplace; and (3) similarities weigh more heavily than differences." *Pom Wonderful*, 775 F.3d at 1127 (citation and footnote omitted); *see also Network Automation*, 638 F.3d at 1151 (emphasizing the importance of addressing how consumers would encounter the mark in the marketplace). "[T]he more similar the marks in terms of appearance, sound, and meaning, the greater the likelihood of confusion." *Brookfield*, 174 F.3d at 1055 (holding "MovieBuff" and "MovieBuff.com" were "essentially identical"). "[A]s the similarities between two marks increase, so too does the likelihood of confusion." *Pom Wonderful*, 775 F.3d at 1127

(citation omitted). “Non-visual similarities are particularly important where . . . there is no evidence that consumers encounter the marks side-by-side in the marketplace.” *Id.* at 1129 n.9.

Plaintiff argues that there are many similarities between IYO and IO. ECF 6-2, at 17. The marks are similar in appearance with only one letter separating them. *Id.* In sound, the marks are identical such that, when spoken, they are indistinguishable. *Id.*

Defendants counter that there are no similarities between the marks. ECF 25, at 21–23. First, Defendants point to Plaintiff’s website. *Id.* at 22. In the prelawsuit version, IYO is in all-caps, blocky yellow-green fonts against a black screen. *See* Caruso Dec. ¶ 2, Exs. A & B. In the post-lawsuit version, IYO is now “IyO” with a more uniform stroke weight and more rounded conventional letters in black and white. *Id.* Here, there is no marketing of IO’s products for comparison. ECF 25, at 22. But IO will market its products with lowercase “io.” *Id.* Thus, there will be difference in capitalization and the missing “y.” *Id.* Defendants also argue that the similarity in sound does not matter because Plaintiff’s only sales channel is its website where consumers will not rely on the sound of the mark in their purchasing decisions. *Id.*

Plaintiff argues that its online marketing occurs via its TED Talk. ECF 35, at 9. Likewise, Defendants’ marketing also relies on video which is embedded in the May 21 announcement. *Id.* Thus, the sound of the marks does play a role in the analysis. *Id.*

In *Synoptek, LLC v. Synaptek Corp.*, the court determined the similarity of marks for “Synoptek” and “Synaptek.” 309 F. Supp. 3d 825, 836 (C.D. Cal. 2018). The court found that because the two marks were phonetic equivalents and had only a one or two letter difference, there was a strong similarity weighing in favor of likelihood of confusion. *Id.* at 387. The court also held that “[t]he striking similarity of appearance and sound in the parties’ marks here outweighs differences in how the marks may be presented in the parties’ advertising.” *Id.* at 383.

Like in *Synoptek*, the Court finds that, at this stage, the appearance and sound in the parties’ marks weighs in favor of infringement.

e. Marketing Channel Convergence

“In assessing marketing channel convergence, courts consider whether the parties’ customer bases overlap and how the parties advertise and market their products.” *Pom Wonderful*,

775 F.3d at 1130 (citing *Nutri/System, Inc. v. Con–Stan Indus., Inc.*, 809 F.2d 601, 606 (9th Cir. 1987)). “Marketing channels can converge even when different submarkets are involved so long as ‘the general class of . . . purchasers exposed to the products overlap.’ ” *Id.* (citing *Sleekcraft*, 599 F.2d at 353).

The parties devote very little briefing to this factor. Plaintiff argues that both parties market to the general public through the internet. ECF 6-2, at 19. Defendants counter that no IO product exists, so none has been advertised. ECF 25, at 23–24. Plaintiff contends that overlap in advertising, distribution, and customer demographics favors Plaintiff. ECF 35, at 11.

Based on the limited record, the Court finds that marketing channel convergence weighs slightly in favor of infringement because of the overlap in customer bases and internet marketing of products.

f. Evidence of Actual Confusion

“[E]vidence of actual confusion, at least on the part of an appreciable portion of the actual consuming public, constitutes strong support for a ‘likelihood of confusion’ finding.” *Reardon*, 683 F.3d at 1210 (citing *Playboy Enters., Inc. v. Netscape Comm’cs Corp.*, 354 F.3d 1020, 1026 (9th Cir. 2004)). “[C]onfusion on the part of potential consumers may be relevant” and “non-consumer confusion can serve as a proxy for consumer confusion.” *Id.* at 1215 (citations omitted). “Because of the difficulty in garnering such evidence . . . the failure to prove instances of actual confusion is not dispositive.” *Ironhawk*, 2. F.4th at 1165 (quoting *Sleekcraft*, 599 F.2d at 353). “Therefore, ‘this factor is weighed heavily only when there is evidence of past confusion or, perhaps, when the particular circumstances indicate such evidence should have been available.’ ” *Id.* (quoting *Sleekcraft*, 599 F.2d at 353).

Plaintiff argues that the immediate reaction of Plaintiff’s investors and professional network, upon learning of the May 21 “introduction” of IO, was that Plaintiff would be swamped by Defendants and that Defendants had stolen Plaintiff’s name. ECF 6-2, at 18. One of Plaintiff’s investors, David Rangel, indicated that several of his contacts have already asked him whether “IYO had anything to do with OpenAI’s announcement of IO” and he believes this was because the confusion that Defendants are causing in the marketplace. ECF 6-4, Declaration of David

1 Rangel (“Rangel Decl.”) ¶ 10; *see also* ECF 6-5, Declaration of Ed Catmull (“Catmull Decl.”) ¶
2 13.

3 Defendants counter that there is no evidence of consumer confusion because IO Products
4 has no consumers yet. ECF 25, at 23. While Plaintiff’s investors might be confused, that is not
5 relevant to the consumer confusion inquiry. *Id.*

6 Here, there is no evidence of actual consumer confusion. However, courts have found that
7 confusion of non-consumers may be relevant. *Reardon*, 683 F.3d at 1216. “[C]onfusion on the
8 part of at least certain non-consumers could either: (1) turn into actual consumer confusion (i.e.,
9 potential consumers); (2) serve as an adequate proxy or substitute for evidence of actual consumer
10 confusion (i.e., non-consumers whose confusion could create an inference of consumer
11 confusion); or (3) otherwise contribute to confusion on the part of the consumers themselves (i.e.,
12 non-consumers whose confusion could influence consumer perceptions and decision-making).”
13 *Id.*

14 The Court finds that Plaintiff’s investors may serve as a proxy for actual consumer
15 confusion. However, the Court notes that Plaintiff’s investors’ testimony may be self-serving and
16 reliant on hearsay. At this stage, due to the limited record, these declarations are given slight
17 weight. Evidence of actual consumer confusion weighs slightly in favor of infringement.

18 **g. Defendant’s Intent in Selecting the Mark**

19 When assessing the defendant’s intent to infringe, “[t]his factor favors the plaintiff where
20 the alleged infringer adopted his mark with knowledge, actual or constructive, that it was another’s
21 trademark.” *Ironhawk*, 2. F.4th at 1167 (internal quotation marks omitted) (citing *JL Beverage*,
22 828 F.3d at 1111–12). For reverse confusion cases, the court “ask[s] whether there is some
23 evidence that the junior user, when it knew of the senior user, was at fault for not adequately
24 respecting the rights of the senior user.” *Id.* at 1167–68 (quoting 4 McCarthy on Trademarks and
25 Unfair Competition § 23:10 (5th ed. 2020)). “Intent can be shown through . . . ‘evidence that, for
26 example, the [junior user] knew of the mark, should have known of the mark, . . . or otherwise
27 culpably disregarded the risk of reverse confusion.’ ” *Id.* at 1168 (citation omitted).
28

Plaintiff contends that at the time of the May 21 announcement, Defendants were well aware of the IYO mark. ECF 6-2, at 20. Defendants had encountered IYO well before the May 21 announcement through meetings and purchases of Plaintiff's products. *Id.* Altman believed that IYO would be a competitor of IO Products. ECF 1, ¶ 78.

Defendants contend that they chose the IO name in mid-2023 before they knew IYO would be using the IYO mark in commerce. ECF 25, at 25. However, Plaintiff points out that it exchanged communications with Apollo Projects and Altman himself in March and April of 2022. ECF 6-6, Rugolo Decl. ¶¶ 3–5; ECF 6-7, Ex. A. Further, Plaintiff's application for the IYO mark was filed on September 17, 2021 and published on February 14, 2023, before Defendants would have chosen the IO name. ECF 1, ¶¶ 50, 66.

The Court finds that, based on this limited record, Defendant's intent weighs in favor of infringement.

h. Likelihood of Product Expansion

A “‘strong possibility’ that either party may expand [its] business to compete with the other will weigh in favor of finding that the present use is infringing.” *Ironhawk*, 2 F.4th at 1168 (quoting *Sleekcraft*, 599 F.2d at 354).

Plaintiff argues that this factor is irrelevant and weighs neutrally. ECF 6-2, at 20–21. Defendants provide no opposition to the assertion that the factor weighs neutrally. ECF 25, at 25. The Court finds that the factor is neutral.

After review of each of the *Sleekcraft* factors, the Court finds that Plaintiff has established a likelihood of success. In totality, at this stage, the factors weigh in favor of infringement. The Court next turns to the remaining *Winter* factors.

C. Irreparable Harm

A plaintiff seeking a TRO or preliminary injunction for violation of 15 U.S.C. § 1125(a), (c), (d) is “entitled to a rebuttable presumption of irreparable harm . . . upon a finding of likelihood of success on the merits.” 15 U.S.C. § 1116(a); *see also AK Futures LLC v. Boyd St. Distro, LLC*, 35 F.4th 682, 694 (9th Cir. 2022) (same). Because IYO has shown a likelihood of success on the merits, it is entitled to a presumption of irreparable harm.

1 To rebut this presumption, Defendants argue that Plaintiff's injury is in the past because
 2 the announcement occurred in May 21. ECF 25, at 27. Defendants contend that there is no
 3 imminent irreparable harm and Plaintiff's loss of fundraising is purely financial. *Id.* Finally,
 4 Defendants contend that on March 4, 2025, Altman told Plaintiff that he was working on
 5 something competitive called io but Plaintiff waited until June 9, 2025 to file this action. *Id.*

6 Plaintiff argues that its injury is ongoing as its fundraising campaign continues to falter
 7 after Defendants' May 21 announcement. ECF 35, at 13. Plaintiff's harm is not purely financial
 8 because if Plaintiff fails to secure funding, it will be unable to manufacture its IYO ONE and
 9 fulfill its pre-orders. *Id.* at 14. This will result in a loss of credibility and reputation. *Id.* Further,
 10 Plaintiff will be unable to recruit new talent which is required for the growth of a technology start-
 11 up. *Id.* Finally, Plaintiff did not delay in filing this action because Plaintiff immediately
 12 demanded Defendants cease infringement after the May 21 announcement. *Id.* Plaintiff did not
 13 have a claim for infringement from Altman's March 4 email. *Id.* at 15.

14 Based on the limited record, Defendants have not rebutted Plaintiff's presumption of
 15 irreparable harm. The Court does not find that Plaintiff delayed in filing this action. This *Winter*
 16 factor weighs in favor of a TRO.

17 **D. Balance of Equities**

18 "[W]here the only hardship that the defendant will suffer is lost profits from an activity
 19 which has been shown likely to be infringing, such an argument in defense merits little equitable
 20 consideration." *Restoration Hardware, Inc. v. Alimia Light*, No. 23-CV-00948, 2023 WL
 21 3639360, at *2 (N.D. Cal. May 24, 2023) (cleaned up).

22 Plaintiff argues that any harm resulting from a TRO should be discounted because
 23 Defendants knew of the infringing mark. ECF 6-2, at 24. Further, Plaintiff only seeks an order
 24 enjoining Defendants' use of the name "IO" in connection with their new company/products, not
 25 to prevent Defendants from pursuit of a competitive product under a different name. *Id.*
 26 Defendants could alter their brand and company name to comply with the TRO resulting in very
 27 little harm. *Id.*

1 Defendants argue that because there is no risk of customer confusion, the balance of
2 equities weighs against a TRO. ECF 25, at 29–30.

3 Based on the limited record, it is difficult to discern whether Defendants would suffer from
4 more than mere loss profits. If the injunction is granted, Defendants may ultimately need to alter
5 their brand and company name. Here, there are no infringing products already in the marketplace.
6 Given Plaintiff’s showing of likelihood of success on the merits, the Court finds that the balance
7 of the equities on the record weighs in favor of enjoining Defendants’ infringing conduct.

8 **E. Public Interest**

9 Finally, “[a]n injunction that prevents consumer confusion in trademark cases . . . serves
10 the public interest.” *Am. Rena Int’l Corp. v. Sis-Joyce Int’l Co.*, 534 F. App’x 633, 636 (9th Cir.
11 2013) (citing *Internet Specialties W., Inc. v. Milon–DiGiorgio Enters., Inc.*, 559 F.3d 985, 993
12 (9th Cir. 2009)). The Court finds that all four *Winter* factors weigh in favor of TRO.

13 **F. Rule 65(c) Bond**

14 Under Rule 65(c), “[t]he court may issue a . . . [TRO] only if the movant gives security in
15 an amount that the court considers proper to pay the costs and damages sustained by any party
16 found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). District courts have
17 considerable discretion in setting the amount of the bond, “and the bond amount may be zero if
18 there is no evidence the party will suffer damages from the injunction.” *Connecticut Gen. Life Ins.*
19 *Co. v. New Images of Beverly Hills*, 321 F.3d 878, 882 (9th Cir. 2003) (internal citations omitted).
20 “In particular, the district court may dispense with the filing of a bond when it concludes there is
21 no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Johnson v.*
22 *Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quotations omitted).

23 Here, Plaintiff argues there should be no bond because it has demonstrated strong evidence
24 of infringement and Defendants do not have an infringing product in the market. ECF 6-2, at 25.
25 Plaintiff does not seek to enjoin Defendants from development, production, or sale of products—
26 only an injunction for use of the infringing mark. ECF 35, at 15. Defendants argue a substantial
27 bond should be required. ECF 25, at 30. Defendants request leave to submit briefing on the
28 proper amount of bond necessary to protect their substantial investments of time and resources,

including the sums they spent on the merger announcement and video, brand development, io.com domain acquisition, and the proper scope of any injunction. *Id.*

At oral argument, the Court provided Defendants with leave to provide an accounting of the proper amount of bond. *See* ECF 41. Defendants submitted under seal a single sum rivaling the cost of a Super Bowl commercial. ECF 46-1, ¶ 2. Defendants do not provide accounting of the single sum due to “mutual non-disclosure agreements.” *Id.* Plaintiff submitted objections. ECF 48.

Given Defendant’s limited support for proper bond amount, and Plaintiff’s likelihood of success on the merits, the Court will not require Rule 65(c) bond.

V. CONCLUSION

For the reasons stated above, the Court **GRANTS** the motion for TRO. Considering the limited record, the Court will require the parties to further brief a motion for preliminary injunction.

Defendants IO Products, Inc., OpenAI, Inc., OpenAI LLC, Sam Altman, and Jonathan Paul Ive, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with Defendants having notice of this Order are hereby temporarily restrained:

1. From using the IYO mark, and any mark confusingly similar thereto, including the IO mark in connection with the marketing or sale of related products.

This Order shall restrain Defendants until an order on motion for a preliminary injunction. Plaintiff’s motion for preliminary injunction is due on August 1, 2025. Opposition is due on August 22, 2025. Reply is due on September 5, 2025. Hearing on preliminary injunction is scheduled for October 7, 2025, at 2:00 p.m. Failure to timely file motion for preliminary injunction will result in immediate lift of the TRO.

Joint case management statement is due on July 3, 2025, with initial case management conference on July 17, 2025, at 2:00 p.m.


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This Order resolves ECF 6.

IT IS SO ORDERED.

Dated: June 20, 2025



TRINA L. THOMPSON
United States District Judge

United States District Court
Northern District of California